IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.9726 OF 2004

Shri Satyadev Shivnathsingh Thakur, .. Petitioner

vs

Shri Tanaji Kaliram Choudhari, .. Respondent

Mrs Anamika Malhotra, for the petitioner.

Mr Sachin U.Dhakephalkar, for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 14th December, 2004.

PC:

1. Rule. Returnable forthwith. Mr Sachin Dhakephalkar, learned counsel for the respondent, waives service. By cosnent, Rule is heard finally.

2. This petition is directed against the order dated 19.11.2004 passed by the learned Addl.District Judge, Thane, rejecting Misc. Application No.233 of 2004. That application was filed seeking extension of time to deposit cost and file written statement as per the order dated 27.4.2004 passed in Civil Appeal No.21 of 2001. The learned Judge, by order dated 27.4.2004 while

allowing the said appeal filed by the respondent-plaintiff and remanding the matter for fresh trial, allowed the petitioner to file his written statement and pay cost of Rs.3000/- on or before 28.6.2004. Since the petitioner could not pay the cost and file the written statement within the time stipulated, he filed Misc.Civil Application No.233/2004 seeking extension of time to deposit the cost and file the written statement. That application came to be rejected by the impugned order.

3. I heard the learned counsel for the parties, perused the impugned order and other material placed before me. It appears that the petitioner, within ten days from the date on which the petitioner was expected to deposit the cost and file written statement, had approached the Court and offered to pay cost and file written statement as per the order dated 27.4.04. However, he was not allowed and hence he was required to file Civil Misc.Application No.233 of 2004. The observations made by the learned Judge in the impugned order against the petitioner regarding his negligence in the matter cannot be faulted. However, keeping in view the peculiar facts and circumstances of the case, in my opinion, interest of justice demands that one more opportunity be given to

the petitioner to deposit the cost and file written statement within timeframe. Hence, the following order.

(i) The petitioner to deposit cost as per the order dated 27.4.2004 and in addition thereto Rs.2000/- to be paid to the plaintiff and file the written statement within two weeks from today, failing which it is open for the trial Court to proceed exparte against the petitioner.

(ii) On the petitioner depositing the cost aforestated and filing the written statement, the trial Court to proceed with the suit on merits in accordance with law and dispose of the same as expeditiously as possible and preferably within a period of six months from today.

(iii) The petitioner to produce this order before the trial Court within four weeks from today.

(D.B.BHOSALE, J.)